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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,063	10/09/2001	Hiroshi Kokubunji	4041K-000037	7635

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EXAMINER

FLANIGAN, ALLEN J

ART UNIT	PAPER NUMBER
3743	7

DATE MAILED: 07/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/974,063	KOKUBUNJI ET AL.
	Examiner	Art Unit
	Allen J. Flanigan	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 May 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
- 1) Certified copies of the priority documents have been received.
 - 2) Certified copies of the priority documents have been received in Application No. _____.
 - 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6 . | 6) <input type="checkbox"/> Other: _____ |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohashi et al.

As noted in the previous Office action, limitations in the claims that seek to distinguish a known article by reciting intended use limitations do not impart patentability to the claimed article. The limitations added to claims 1 and 9 regarding the "third space not containing any circulating heat exchange medium" clearly constitute statements that concern the intended use of the device. Such recitations are not patentably distinguishing when, as here, the claimed structure itself is not distinguishable from the prior art. ***Ex parte Masham, 2 U.S.P.Q. 2d 1647.*** At best, such recitations require the prior art structure be capable of such use. Clearly, Ohashi is *capable* of being used with only two fluids flowing through the outermost passage groups of the core, notwithstanding the lack of any suggestion or teaching to do so.

Claims 9, 13, and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ohashi et al.

Please see the comments made in regard to the above rejection in the previous Office action.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohashi et al. in view of Ando, O'Connor, and Panthofer.

Please see the comments made in regard to the above rejection in the previous Office action.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teruhiko in view of Chartet and Young.

Teruhiko shows a heat exchanger with the recited structure, including separators defining a third space within a header tank (claim 10 does not recite separators in "both tanks", but only in "the header tank", thus Teruhiko's single divided header tank fully meets the claim recitations in this regard) which has a weep hole 1a that is clearly meant for permitting the detection of a malformed joint between the separators 5, 6 and the wall of the header (see Fig. 13). Young expressly discloses that it is known in the art to employ such weep holes to inspect for partition wall leaks (see lines 23-26 of the left hand column of page 1). Thus, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made in making the heat exchanger of Teruhiko using a conventional brazing technique to employ the leakage testing step of Young to ensure the integrity of the partition walls and seals. As noted in the previous Office action, Chartet shows that it is known in the art to coat components to be brazed with flux after preassembly.

Applicant's arguments filed 5/21/03 have been fully considered but they are not persuasive or are moot in view of the new grounds of rejection.

As noted above, the language added to claims 1 and 9 fails to patentably distinguish the claimed structure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (703) 308-1015. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone numbers for the organization where this application or proceeding is

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assigned are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.



Allen J. Flanigan
Primary Examiner
Art Unit 3743

AJF
July 18, 2003